

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 467 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KANTILALL RATILAL BISCUITWALA

Versus

ARUNBHAI RATILAL BISCUITWALA

Appearance:

1. Criminal Revision Application No. 467 of 1994
MR JB PARDIWALA for Petitioner No. 1
RULE SERVED for Respondent No. 1
Ms Nandini Joshi, APP for Respondent No. 2
-

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/02/2003

ORAL JUDGEMENT

This is a revision application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for enhancement of punishment awarded to the first respondent by the court below for offence punishable under section 500 of IPC. The petitioner had filed a criminal complaint being No.5929/84 in the court of the learned Judicial

Magistrate First Class at Valsad against the first respondent for an offence punishable under section 500 of IPC. The petitioner is the brother of the first respondent. It was the case of the petitioner before the trial court that the first respondent did not have a good and amicable relations with the petitioner. That the first respondent had written three letters to different persons containing allegations against the character of the petitioner. That in one letter Exh.18, the first respondent stated that the present petitioner had quarreled with the mother-in-law of Dakshaben. That he was in a drunken condition and he had uttered abusive words at night hours to one Pushpa Masi. That the petitioner has lost his character and, therefore, we should disconnect the relations with him so that we can maintain our image and prestige in the society.

2. In another letter Exh.19, he said that the petitioner was a thief. In the third letter Exh.20, the first respondent went to the extent of alleging that there was illicit relationship between the petitioner and his sister Sumitraben. It is also stated in the said letter that Sumitra had one husband at Mumbai and the second (the petitioner) at Valsad. That therefore, she should stay at Mumbai for one month and at Valsad for one month. It is further stated in it that Sumitra had such a bad history in past also and she was driven away for two to three years by her husband. That she takes money for doing certain work.

3. The petitioner felt offended by the aforesaid letters because the persons who received those letters had contacted him also. Ultimately, a complaint was filed and the contesting respondent appeared before the trial court. The trial court recorded the plea of the first respondent and thereafter, it recorded evidence produced by the petitioner. At the close of the trial, the learned Magistrate found that the petitioner was guilty for an offence punishable under section 500 of IPC. Therefore, the petitioner was convicted for the said offence and was sentenced to suffer S.I. for one year. He was also directed to pay Rs.1000/-. In default of payment of fine, he was required to further undergo S.I. for three months.

4. Feeling aggrieved by the judgment and conviction order dated 30.4.1990 recorded by the learned JMFC, Valsad, the first respondent preferred criminal appeal being Criminal Appeal No.25/90. After hearing, the learned Addl.Sessions Judge, Valsad at Navsari dismissed the said appeal of the first respondent. However, by so

doing, the learned Judge revoked the jail sentence and confirmed the punishment of fine by judgment and order dated 2.9.94.

5. Feeling aggrieved by the said judgment and order of the learned Addl.Sessions Judge, the petitioner-original complainant has preferred this revision before this court. It has been contended that serious allegations were made against the petitioner by the first respondent touching the character of the petitioner as well as of his sister Sumitra. That it was very unfair on the part of the first respondent to make such a derogatory remarks and allegations against the real brother and sister. That looking to the nature of allegations made in those documents, the learned Addl.Sessions Judge has committed serious illegality in reducing the quantum of sentence and therefore, the order of the learned Addl.Sessions Judge is illegal and perverse and requires to be interfered with. The petitioner has therefore, prayed that this revision application be allowed and the punishment awarded by the learned Addl.Sessions Judge be enhanced.

6. On receipt of the revision application, rule was issued and it was duly served. Despite service of notice of rule, the first respondent has not chosen it proper to appear before the court in order to contest the revision. When the matter was taken up for final hearing, Mr J B Pardiwala, learned Advocate has argued the matter at length on behalf of the petitioner. The first respondent did not appear before the court and Mr N D Gohil, learned APP has appeared on behalf of the State. During the course of his argument, Mr J B Pardiwala, learned Advocate has contended that the first respondent had made serious allegations against the character of the petitioner as well as the character of his sister. It is also contended by him that the allegations were to the effect that the petitioner had physical relations and that too, with his real sister Sumitraben. Now, witnesses have been examined the allegations made in letters are proved to be false and that is why the first respondent has been convicted. The learned Addl.Sessions Judge has found in para 18 of the judgment that the trial court has not committed any error in convicting the first respondent.

7. However, the learned Judge found that since the petitioner, first respondent and Sumitraben are all brothers and sister and since there is some dispute and quarrel between the brothers about their properties and since Sumitraben has intervened in the said dispute

between the two brothers, the first respondent must have made some allegations in angry moods and, therefore, the jail sentence was required to be cancelled. Here, the learned Advocate for the petitioner has further argued that even filing of complaint has not improved the conduct of the first respondent. He has also stated at the Bar that even after the conviction recorded by the trial court, the first respondent has not stopped making allegations and even derogatory remarks were made by the first respondent to the petitioner and other relations. This shows that the award of punishment and sentence has not improved the conduct of the first respondent.

8. It is true that sometimes, the jail sentence is not being imposed with a view to provide an opportunity to an accused to improve his conduct. In the present case, we find that even when punishment was inflicted, there was no improvement. Again when the jail sentence was cancelled, there was no improvement. This shows that the first respondent is out to damage the status respect and character of the petitioner in the society. In that view of the matter, when the first respondent has not stopped making allegations against the petitioner and when the allegations are to the effect that the petitioner had physical relations with his own real sister Sumitraben, I am of the view that the matter cannot be taken very lightly. I am also of the view that there would be likelihood in the improvement of the conduct of the first respondent, if he is required to remain in jail for a period of one month. In other words, it would be appropriate to award jail sentence at least for a month to the first respondent. I am also of the view that this is not a fit case where the jail sentence should have been cancelled outright.

9. In the aforesaid view of the matter, the present revision is allowed. The judgment and conviction orders recorded by the two courts below are confirmed. However, the first respondent is sentenced to suffer S.I. for one month for an offence punishable under section 500 of IPC, over and above the fine imposed by the trial court as well as the lower Appellate Court. Therefore, the judgment and order of the learned Addl. Sessions Judge in the aforesaid appeal are modified to the above extent and the judgment and conviction order are confirmed. Rule is made absolute to the above extent.

The trial court will naturally issue appropriate warrant for arrest of the first respondent so that he can serve out the remaining jail sentence.

10.2.2003 [D P Buch, J.]

msp